



IRF22/2767

Gateway determination report – PP-2022-2899

To schedule “retail premises” as an additional permitted use on Lot A DP 329168, 242 Rusden Street, Armidale

August 22

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Gateway determination report – PP-2022-

Subtitle: To schedule “retail premises” as an additional permitted use on Lot A DP 329168, 242 Rusden Street

© State of New South Wales through Department of Planning and Environment 2022. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (August 22) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

Contents

| | | |
|----------|---|----------|
| 1 | Planning proposal | 1 |
| 1.1 | Overview..... | 1 |
| 1.2 | Objectives of planning proposal | 1 |
| 1.3 | Explanation of provisions..... | 1 |
| 1.4 | Site description and surrounding area | 2 |
| 1.5 | Mapping..... | 3 |
| 2 | Need for the planning proposal..... | 4 |
| 3 | Strategic assessment..... | 4 |
| 3.1 | Regional Plan | 4 |
| 3.2 | Local | 5 |
| 3.3 | Section 9.1 Ministerial Directions | 5 |
| 3.4 | State environmental planning policies (SEPPs) | 5 |
| 4 | Site-specific assessment | 6 |
| 4.1 | Social and economic | 6 |
| 4.2 | Infrastructure | 7 |
| 5 | Consultation..... | 7 |
| 5.1 | Community | 7 |
| 5.2 | Agencies..... | 7 |
| 6 | Timeframe..... | 7 |
| 7 | Local plan-making authority..... | 8 |
| 8 | Assessment summary..... | 8 |
| 9 | Recommendation..... | 8 |

Table 1 Reports and plans supporting the proposal

| Relevant reports and plans |
|---|
| Planning Proposal No. 19 – 242 Rusden Street, Armidale Additional Permitted Use Lot A DP 329168 |

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

| | |
|---------------------------------|--|
| LGA | Armidale Regional Council |
| PPA | Armidale Regional Council |
| NAME | Retail premises as an additional permitted use at 242 Rusden Street |
| NUMBER | PP-2022-2899 |
| LEP TO BE AMENDED | Armidale Dumaresq LEP 2012 |
| ADDRESS | 242 Rusden Street |
| DESCRIPTION | Lot A DP 329168 |
| RECEIVED | 15/08/2022 |
| FILE NO. | IRF22/2767 |
| POLITICAL DONATIONS | There are no donations or gifts to disclose and a political donation disclosure is not required |
| LOBBYIST CODE OF CONDUCT | There have been no meetings or communications with registered lobbyists with respect to this proposal |

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- Regularise the permissibility of the retail land uses that have historically and continually been carried out at 242 Rusden Street, Armidale.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Armidale Dumaresq LEP 2012 Schedule 1 to include “retail premises” as an additional permitted use for the site.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

242 Rusden Street (Lot A DP 329168) is located approximately 1.4km north west of the Armidale Post Office and is over 800m from the fringe of the Armidale CBD (**Figure 1**). The site is reported as being located within a hub of commercial uses; despite being situated in an R1 General Residential zone. Council indicated that the confluence of Rusden and Ohio Streets and the immediate locality, comprises the Grand Hotel, a hairdresser, a curtain shop and Drummond Public School (**Figure 2**).



Figure 1 Subject site in proximity to Armidale CBD (source: Six Maps)

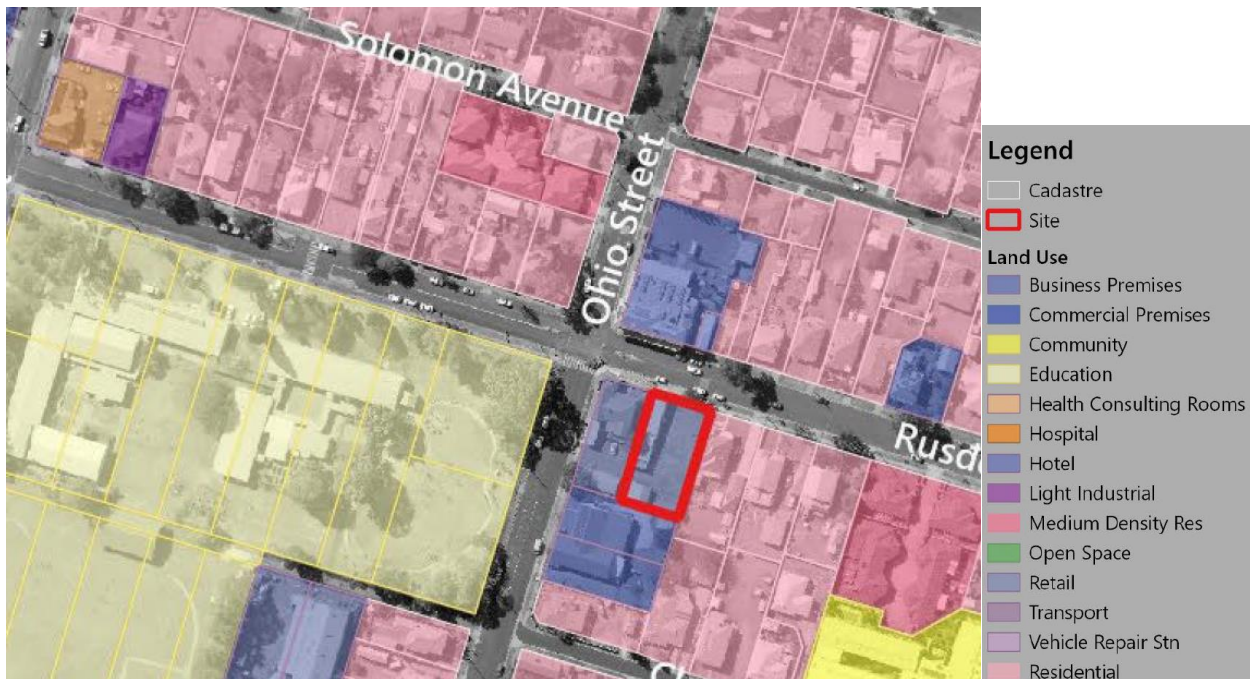


Figure 2 Surrounding land uses(source: Council's Planning Proposal)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Additional Permitted Uses map (currently numbered APU_002AA), which is suitable for community consultation. Technical LEP maps will need to be prepared in accordance with ePlanning requirements during the finalisation of the proposal.

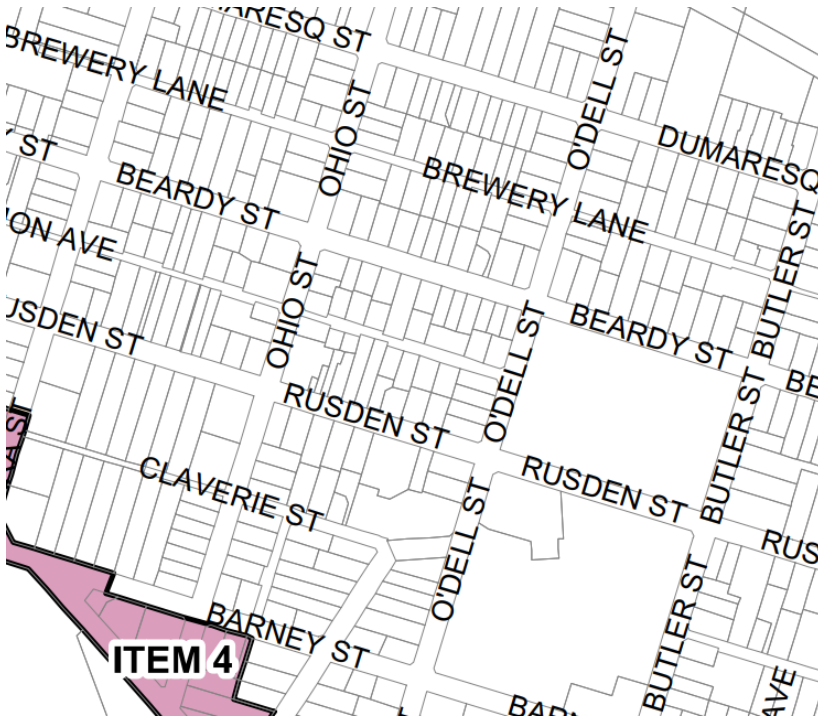


Figure 3 Existing additional permitted uses map



Figure 4 Proposed additional permitted uses map

2 Need for the planning proposal

The planning proposal is not the result of a local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report.

The requirement for the planning proposal has arisen as a result of submissions received during exhibition of PP-2021-4173, which aims to harmonise the two LEPs currently applying to the land. A submission received for this specific property raised the request to regularise the use of the site for retail land use. This planning proposal is in the final stages of the process and is likely to be completed by the time this proposal is finalised.

The site has a long history of use for the purposes of a commercial premises. The use is currently operated on the land by virtue of existing use rights, since the approval of use of the site for a retail clothing outlet in 2006. Prior to this, the site has been used as a butcher's shop (1960 to 2001), and a commercial premise for food preparation (2001 – 2006).

Council have indicated that the current use undertaken at 242 Rusden Street benefits from existing use rights, as the original use was permissible in the zone when it was approved under a previous LEP. This is a key reason for seeking regularisation of the use, as existing use rights limit rebuilding or intensification of land uses. Council have outlined that this limits the continued use of the site as a retail premises and prevents major investment in the existing building.

Council have identified that another option of achieving the aim of the proposal is to rezone the site to B2 Local Centre. However, Council have indicated this requires additional studies and consideration, given it would be appropriate to include all existing commercial operations within the immediate vicinity in this proposal. Additionally, business zones more broadly are currently being reviewed and updated by the Department of Planning and Environment. Current business and industrial zones included under the Standard Instrument LEP are being translated to five new employment zones, with three supporting zones.

Were the site to be currently zoned B2 under the existing business zones, it would be likely that this would be translated to E1 Local Centre under the new employment zone framework. Pursuant to the exhibition material, which is available on the Department's website, a key change between the existing B2 Local Centre and the proposed E1 Local Centre is the objective of the zone which establishes that residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area is enabled within this zone. This may be an appropriate zone to apply to the site to facilitate ongoing operations at the site, within an area with established commercial uses. However, this is better reviewed as part of Council's wider strategic planning review, which is currently underway.

Therefore, at this time the planning proposal is considered the best means of achieving the objectives or intended outcomes, in the interim period, while Council works through its strategic planning process. However, Council is encouraged to revisit the zone of the land in due course.

3 Strategic assessment

3.1 Regional Plan

The proposal is considered broadly consistent with the New England North West Regional Plan 2036. It is noted that the draft New England North West Regional Plan 2041 has been exhibited and is pending final release. It is considered that the plan is also broadly consistent with the New England North West Regional Plan 2041. However, it is recommended that the planning proposal therefore be updated to also address consistency with draft New England North West Regional Plan 2041.

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 6 Local strategic planning assessment

| Local Strategies | Justification |
|------------------------------------|---|
| Local Strategic Planning Statement | Action 2d) Employment Land of the LSPS is considered broadly relevant to the proposal. These actions relate to future studies to inform requirement of commercial land within the LGA and development of this land to assist with diversification of the local economy. Given the APU proposal is an interim measure to regularise the use of the site, it is considered these actions are more relevant to future proposals, particularly in the case of a rezoning of the land to E1 or another employment zone in the future. As previously stated, Council is encouraged to pursue the necessary studies to inform future management and development of employment land within the LGA, in accordance with the objectives of the employment zone reform program, once formally implemented. |

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

| Directions | Consistent/ Not Applicable | Reasons for Consistency or Inconsistency |
|-----------------------|-----------------------------|---|
| 6.1 Residential Zones | No-Justifiably inconsistent | <p>This direction applies where a planning proposal will affect land within an existing or proposed residential zone.</p> <p>The proposal is inconsistent as it contains provisions that may reduce the permissible residential density of the land by introducing a non-residential use as an APU on the land.</p> <p>The inconsistency is considered minor as the zone remains unchanged and the land could still feasibly be used for residential use in future. Further, the proposal aims to regularise the existing use on the site that has lawfully occupied the site since 2006.</p> |

3.4 State environmental planning policies (SEPPs)

The planning proposal is considered to be broadly consistent with all relevant SEPPs. A number of SEPPs may be required to be addressed as part of a future development application on the land and this can be appropriately undertaken at future stages of the proposal.

4 Site-specific assessment

Environmental impacts arising from the proposal are considered to be unlikely. The site is unlikely to be contaminated, based on the documented history of land use. The site is a developed parcel in the urban centre of Armidale and widespread clearing and impact upon native vegetation is not required to facilitate the proposed additional permitted use. The proposal represents a regularisation under the existing planning instrument to facilitate ongoing operations of an approved retail premises on the site.

The surrounding area is characterised by other existing commercial uses, with the intersection of Rusden and Ohio Streets representing a small neighbourhood centre, that could be more formally recognised, where supporting review and studies are undertaken for the surrounding area. Council is encouraged to pursue this approach in accordance with Action 2d of the LSPS and following the completion of the employment zone reform process.

4.1 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 10 Social and economic impact assessment

| Social and Economic Impact | Assessment |
|--------------------------------------|--|
| Retail uses outside the Armidale CBD | <p>The use of the site for this purpose currently enjoys existing use rights and the proposal will regularise the use of this site, outside the Armidale CBD, as a retail premises. The expansion of this kind of use in an existing residential area is limited in that operations require greater management and control to manage land use conflict with surrounding residential neighbours. The proposal to regularise the existing use may permit alterations and additions to the existing building on the site, however it is considered unlikely that the additional permitted use will result in a considerable expansion of operations at the site, over and above what is already occurring.</p> <p>Further, Council have demonstrated that the immediate locality contains a number of existing commercial uses and operates as an informal local centre. This is unlikely to change, given the number of varying uses in the immediate locality as well as Council's intention to look at the employment zones applied across the LGA more broadly.</p> <p>The impact on the ongoing operation of the Armidale CBD as the centre for business and retail premises from this proposal is considered low risk and manageable in the circumstances.</p> <p>Council are however encouraged to pursue future strategic work to recognise appropriate employment uses, where applicable, noting that the employment zone reform program will provide alternate options to Council's in these circumstances.</p> |

| | |
|---------------------------|--|
| Residential Accommodation | <p>The regularisation of the use of the site for the purpose of retail premises does on paper utilise residentially zoned land within Armidale LGA for another purpose and could be argued to be reducing the amount of land available for residential use.</p> <p>Notwithstanding, this site has been operated as a commercial premise in some capacity for 62 years. The loss of the residentially zoned land is considered on balance minor, given the land has not been formally used for this purpose for a considerable period.</p> <p>Further, the residential zone will remain, meaning the use of the site for this purpose into the future is still available to future occupants.</p> |
| Land Use Conflict | <p>The proposal will allow for the ongoing use of the land as retail premises and may facilitate some alterations and additions to the existing building on site. It is unlikely that the additional permitted use will result in a considerable expansion of operations at the site, over and above what is already occurring.</p> <p>The site is located in an informal local centre and in proximity to other longstanding commercial uses. Given the types of uses within the immediate locality, it is considered that the risk of land use conflict as a result of this proposal is unlikely and can be managed at the development application stage.</p> <p>It is considered that Council should review the land use controls applied to this area, following additional strategic work, to determine if a more appropriate zone can be applied, pursuant to the changes being implemented by the employment zone reform.</p> |

4.2 Infrastructure

The site has access to all essential services. The site is currently occupied by an existing building, which has been formally used for the purposes of a retail premises since 2006 and enjoys existing use rights.

5 Consultation

5.1 Community

Council proposes a community consultation period of 10 working days.

The proposal is considered to be low impact as it regularises an existing arrangement on site, it is also a local matter affecting residents within the immediate locality. In accordance with the LEP Making Guideline, the maximum period of public exhibition for the standard category of planning proposal is 20 working days. This recommendation forms part of the conditions of the Gateway determination.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

Due to the low impact, local nature of the proposal, it is not considered necessary for state agencies to be formally consulted.

6 Timeframe

Council does not specifically outline a time frame to complete the LEP.

The Department recommends a time frame of six months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

Six months is provided recognising the proposal may be impacted by the Christmas and New year holiday period.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal is low impact and a local matter the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The proposal represents a minor amendment to schedule 1 to permit the use of the premises for the purpose of a retail premises,
- The surrounding area is characterised by existing and longstanding commercial uses,
- The impacts of the proposal are localised to the subject site and can be adequately managed.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- Remove the 'draft' watermark on the planning proposal report
- Address the draft New England North West Regional Plan 2041

9 Recommendation

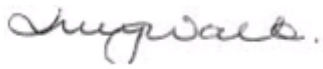
It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 6.1 Residential Zones are minor or justified

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated to:
 - Remove the 'draft' watermark on the planning proposal report
 - Address the draft New England North West Regional Plan 2041
2. The planning proposal should be made available for community consultation for a minimum of 14 working days.
3. The planning proposal must be exhibited one month from the date of the Gateway determination.
4. The planning proposal must be reported to council for a final recommendation four months from the date of the Gateway determination.
5. The timeframe for completing the LEP is to be six months from the date of the Gateway determination.

6. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



26/08/2022

(Signature)

(Date)

Lucy Walker

Manager, Local and Regional Planning, Northern Region



1/9/2022

(Signature)

(Date)

Jeremy Gray

Director, Northern Region

Assessment officer

Ella Wilkinson

Senior Planner, Northern Region

9995 5665